

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: COLUMBIA UNIVERSITY  
PATENT LITIGATION

MDL NO. 1592

IMMUNEX CORPORATION, a Washington  
Corporation and AMGEN INC., a Delaware  
Corporation,

Civil Action No. 04-10740-MLW

Plaintiffs,

C. D. Cal. No. CV 03-4349 MRP (CWx)

vs.

THE TRUSTEES OF COLUMBIA  
UNIVERSITY in the City of New York,  
a New York Corporation,

Defendant.

AND RELATED COUNTERCLAIM

**DECLARATION OF VICKI G. NORTON IN SUPPORT OF AMGEN  
INC'S AND IMMUNEX CORPORATION'S OPPOSITION TO  
COLUMBIA UNIVERSITY'S MOTION TO STAY LITIGATION  
PENDING CONCLUSION OF REEXAMINATION AND REISSUE  
PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE**

I, Vicki G. Norton, declare as follows:

1. I am a partner in the law firm of Wilson Sonsini Goodrich & Rosati, counsel of record for Amgen Inc. and Immunex Corp. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify to such facts.

2. Amgen served Columbia with the First Amended Complaint in Civil Action No. 03-4349 in the Central District of California on September 25, 2003.

3. Columbia sought, and Amgen and Immunex agreed to, an extension of time to answer or file a responsive pleading.

4. On October 27, 2003, Columbia filed a motion to transfer the case to the Northern District of California under 35 U.S.C. § 1404(a). Columbia's motion was denied without oral argument.

5. On October 30, 2003, Columbia filed a motion to dismiss Amgen's Seventh Claim for Relief. Columbia filed a second motion to dismiss Amgen's Seventh Claim for Relief on December 29, 2003. The Court denied Columbia's second motion.

6. Columbia answered on February 12, 2004.

7. On November 25, 2003, Columbia filed a motion to transfer and consolidate all of the following cases into a multidistrict litigation proceeding in the Northern District of California ("MDL Motion") under 35 U.S.C. § 1407: *Immunex Corp. and Amgen Inc. v. The Trustees of Columbia University in the City of New York*, No. CV 03-4349; *Genentech, Inc. v. The Trustees Of Columbia University In The City Of New York*, Civil Action No. C03-1603VRW; *Biogen, Inc., Genzyme Corp., and Abbott Bioresearch Center, Inc. v. The Trustees of Columbia University in the City of New York*, No. 03-CV-11329 MLW; *Wyeth and Genetics Institute LLC v. The Trustees Of Columbia University In The City Of New York*, Civil Action No. 03-11570-MLW; *The Trustees Of Columbia University In the City Of New York v. Johnson & Johnson and Ares Trading S.A.*, Civil Action No. C03-04875 JL; *Serono, Inc. and Ares*

*Trading, S.A. v. The Trustees of Columbia University in the City of New York*, Case No. 03-cv-12401-MLW; *Johnson & Johnson v. The Trustees of Columbia University in the City of New York*, No. 03-CV-8811; and *Baxter Healthcare Corp. v. The Trustees of Columbia University in the City of New York*, No. 03-CV-12221-MLW.

8. Columbia's MDL Motion was decided on April 8, 2004.

9. Attached as Exhibit A is a true and correct copy of §§ 1448, 1901, 2001.06(c), 2010, 2014, 2205, 2206, 2209, 2258, and 2282 from the February 2003 Latest Revision to the Original Eighth Edition of the Manual of Patent Examining Procedure.

10. Attached as Exhibit B is a true and correct copy of a Scheduling Order from the District Court for the Central District of California, dated February 18, 2004 in Civil Action No. 03-4349 MRP(CWx).

11. Attached as Exhibit C is a true and correct copy of a letter dated March 3, 2004 from Jennie L. La Prade (counsel for Amgen Inc. and Immunex Corp.) to Wayne M. Barsky and Kevin S. Rosen (counsel for Columbia).

12. Attached as Exhibit D is a true and correct copy of a letter dated April 26, 2004 from Arthur Wineburg (counsel for Amgen Inc. and Immunex Corp.) to Kevin S. Rosen (counsel for Columbia).

13. Attached as Exhibit E is a true and correct copy of *Ex Parte* Reexamination Filing Data, dated March 31, 2004, from the United States Patent and Trademark Office.

14. Attached as Exhibit F is a true and correct copy of the biography of Dr. Louis Siminovitch, the website of Virtual Museum of Canada ([http://www.virtualmuseum.ca/Exhibitions/Medicentre/en/simi\\_print.htm](http://www.virtualmuseum.ca/Exhibitions/Medicentre/en/simi_print.htm)).

15. Attached as Exhibit G is a true and correct copy of information from the Canadian Lesbian and Gay Archives ("CLGA") regarding Dr. William H. Lewis, from the website of CLGA (<http://www.clga.ca/Material/Records/inven/mlynch/mlynint.htm>).

Executed on June 16, at San Diego, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/Vicki G. Norton  
Vicki G. Norton